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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,398	03/14/2001	Wolfgang Ludwig	71836-012	3668

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EXAMINER
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BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/808,398

Applicant(s)

LUDWIG, WOLFGANG

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11 and 17-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 17-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 11 and 17-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 11, 17, 21, 29, and 33 recite "An apparatus for processing meat which comprises..., the apparatus comprising:". It is not clear whether the structures described in the preamble are part of the claimed device, or not.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 21, 29, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Bellue Jr [Pat. No. 6,145,432].

Bellue Jr teaches an apparatus comprising a vessel (Figure 1, #2), means for selectively heating and cooling (column 3, lines 32-43), and a jacket (Figure 1, #6). Phrases such as "for receiving and agitating bodies of meat" are merely preferred methods of using the claimed apparatus. In response to applicant's arguments, the recitation "for processing meat..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr as applied above, in view of Burkhart [Pat. No. 4,120,981].

Bellue Jr teaches the above mentioned components as well as temperature sensor (Figure 1, #9). Bellue Jr does not recite the temperature sensor being connected to the means for selectively heating and cooling. Burkhart teaches a meat processing device

comprising a vessel with a wall (Figure 5, #18), a temperature sensor extending through the wall and thermally insulated (Figure 5, #54), and heaters controlled via the output of the temperature sensor (Figure 5, #49). It would have been obvious to one of ordinary skill in the art to incorporate the temperature control means of Burkhart into the invention of Bellue Jr since both are directed to meat processing devices, since Bellue Jr already included circulation of heating and cooling fluids (column 3, lines 32-43) as well as a temperature sensor (Figure 1, #9), and since the temperature controller of Burkhart would have provided an efficient means for automatically controlling the temperature within the device of Bellue Jr without the need for manual input.

8. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr, in view of Burkhart, as applied above, and further in view of DE 3119496A. Bellue Jr and Burkhart teach the above mentioned components. Bellue Jr and Burkhart do not recite the temperature sensor having a thrust member with plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and which has plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of Bellue Jr, in view of Burkhart, since all are directed to meat processing devices, since Bellue Jr already included heating and cooling means as well as a temperature sensor (column 3, lines 32-43), since Burkhart already included a temperature sensor within the device (Figure 5, #54), and since the temperature probe of DE 3119496A would have

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provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths.

9. Claims 26, 30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr as applied above, in view of Ludwig [Pat. No. 5,405,630]. Bellue Jr teaches the above mentioned components as well as a jacket (Figure 1, #6) and heaters (Figure 1, #12). Bellue Jr does not recite a refrigeration unit and rotary paddle. Ludwig teaches a meat massager comprising a refrigeration unit (Figure 4, #22) and rotary paddle (Figure 4, #23). It would have been obvious to one of ordinary skill in the art to incorporate the refrigeration unit of Ludwig into the invention of Bellue Jr since both are directed to meat massagers, since Bellue Jr already included a cooling fluid (column 3, lines 32-43) but simply did not state how the fluid was cooled, and since refrigeration units were commonly used to cool fluids for meat massagers as shown by Ludwig (Figure 4, #22). It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles of Ludwig into the invention of Bellue Jr since both are directed to meat massaging devices, since Bellue Jr already included means for rotating the drum (Figure 1, #20), since the paddles of Ludwig would have provided a more effective tumbling action, as compared to the smooth drum of Bellue Jr, and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

10. Claims 17-19, 27-28, 31-32, and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr, in view of Ludwig, as applied above, and further in view of Burkhart.

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Bellue Jr and Ludwig teach the above mentioned components. Bellue Jr also teaches a jacket (Figure 1, #6) and drum (Figure 1, #8). Ludwig also teaches controlling the torque of rotary paddles (Figure 4, #30-31). Bellue Jr and Ludwig do not recite the temperature sensor being connected to the means for selectively heating and cooling. Burkhart teaches a meat processing device comprising a vessel with a wall (Figure 5, #18), a temperature sensor extending through the wall and thermally insulated (Figure 5, #54), and heaters controlled via the output of the temperature sensor (Figure 5, #49). It would have been obvious to one of ordinary skill in the art to incorporate the temperature control means of Burkhart into the invention of Bellue Jr, in view of Ludwig, since all are directed to meat processing devices, since Bellue Jr already included circulation of heating and cooling fluids (column 3, lines 32-43) as well as a temperature sensor (Figure 1, #9), and since the temperature controller of Burkhart would have provided an efficient means for automatically controlling the temperature within the device of Bellue Jr without the need for manual input. It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles of Ludwig into the invention of Bellue Jr since both are directed to meat massaging devices, since Bellue Jr already included means for rotating the drum (Figure 1, #20), since the paddles of Ludwig would have provided a more effective tumbling action, as compared to the smooth drum of Bellue Jr, and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

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11. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr, in view of Ludwig and Burkhart, as applied above, and further in view of DE 3119496A.

Bellue Jr, Ludwig, and Burkhart teach the above mentioned components. Bellue Jr, Ludwig, and Burkhart do not recite the temperature sensor having a thrust member with plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and which has plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of Bellue Jr, in view of Ludwig and Burkhart, since all are directed to meat processing devices, since Bellue Jr already included heating and cooling means as well as a temperature sensor (column 3, lines 32-43), since Burkhart already included a temperature sensor within the device (Figure 5, #54), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths.

12. Claims 21, 26, 29-30, 33-34, and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al [Pat. No. 6,105,490] in view of Gould [Pat. No. 4,994,294].

Horn et al teach a meat marinating device comprising a stationary vessel (Figure 2, #18), a jacket for circulating heat exchange fluids (Figure 2, #30), hollow rotary paddles for cooling the vessel (Figure 1, #36), Horn et al do not recite a heating means. Gould teaches a food tumbling device comprising means for circulating a heating fluid (column

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6, lines 35-60; column 7, lines 1-15). It would have been obvious to one of ordinary skill in the art to incorporate the heating means of Gould into the invention of Horn et al since both are directed to rotary food tumbling and agitating devices, since Horn et al already included a jacket which circulated heat exchange fluid (Figure 2, #30), and since food agitating devices commonly had need for heating means as shown by Gould (column 6, lines 35-60).

13. Claims 17, 27, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al, in view of Gould, as applied above, and further in view of Ludwig.

Horn et al and Gould teach the above mentioned components. Gould also teaches a temperature sensor which controls heating and cooling (column 7, lines 10-15). Horn et al and Gould do not recite a programming means which controls torque. Ludwig teaches a meat tumbling device with programming means controlling the torque of rotary paddles (Figure 4, #30-31). It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles of Ludwig into the invention of Horn et al, in view of Gould, since all are directed to food tumbling devices, since Horn et al already included rotary paddles (Figure 1, #36), and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

14. Claims 11, 22-25, 31, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al, in view of Gould, as applied above, and further in view of DE 3119496A.

Horn et al and Gould teach the above mentioned components. Gould also teaches a temperature sensor in the vessel which controls heating and cooling (column 7, lines 10-15). Horn et al and Gould do not recite the temperature sensor contacting the meat and having a thrust member with plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of Horn et al, in view of Gould, since all are directed to food treating devices, since Horn et al already included heat exchange means (Figures 1-2, #30 & 36), since Gould already included a temperature sensor which controlled heating and cooling (column 7, lines 1-15), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths of the food.

15. Claims 18-20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al, in view of Gould and Ludwig, as applied above, and further in view of DE 3119496A.

Horn et al, Ludwig, and Gould teach the above mentioned components. Gould also teaches a temperature sensor in the vessel which controls heating and cooling (column 7, lines 10-15). Horn et al, Ludwig, and Gould do not recite the temperature sensor contacting the meat and having a thrust member with plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and plural sensing regions along its length

(Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of Horn et al, in view of Gould and Ludwig, since all are directed to food treating devices, since Horn et al already included heat exchange means (Figures 1-2, #30 & 36), since Gould already included a temperature sensor which controlled heating and cooling (column 7, lines 1-15), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths of the food.

16. Claims 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al, in view of DE 3119496A and Gould, as applied above, and further in view of Ludwig.

Horn et al, DE 3119496A, and Gould teach the above mentioned components. Gould also teaches a temperature sensor which controls heating and cooling (column 7, lines 10-15). Horn et al, DE 3119496A, and Gould do not recite a programming means which controls torque. Ludwig teaches a meat tumbling device with programming means controlling the torque of rotary paddles (Figure 4, #30-31). It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles of Ludwig into the invention of Horn et al, in view of Gould and DE 3119496A, since all are directed to food tumbling devices, since Horn et al already included rotary paddles (Figure 1, #36), and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

### ***Response to Arguments***

17. Applicant's arguments filed November 28, 2004 have been fully considered but they are not persuasive.

Applicant argues that Bellue Jr does not teach treating meat with a liquid. However, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647. MPEP 2114. Intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530. The manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647. The purpose to which an apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666.

Regarding the preamble structures of independent claims 11, 17, 21, 29, and 33, they have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the

process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Furthermore, it is not clear whether the structures described in the preamble are part of the claimed device, or not. See the 35 U.S.C. 112(2) above.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Drew Becker*  
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PRIMARY EXAMINER  
12-10-04